

IN THE MATTER OF THE ONTARIO HUMAN RIGHTS  
CODE R.S.O. 1970, CHAPTER 318, AS AMENDED

AND IN THE MATTER OF the complaints made by  
Mr. Randolph Skeete and Mrs. May Samuel, of  
Toronto, Ontario, alleging discrimination  
in employment by Jolyn Jewellery Limited,  
100 Wildcat Road, Downsview, Ontario, and by  
Mrs. Barbara Batherson, c/o Jolyn Jewellery  
Limited

Board of Inquiry

D.A. Soberman

Appearances:

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| Mr. Sydney L. Goldenberg | - Counsel for the Ontario<br>Human Rights Commission<br>and the Complainants, Mr.<br>Randolph Skeete and Mrs.<br>May Samuel |
| Mr. John Weingust        | - Counsel for Jolyn Jewellery<br>Limited and Mrs. Barbara<br>Batherson  |



This enquiry is concerned with the complaints of Mr. Randolph Skeete and Mrs. May Samuel against Jolyn Jewellery Limited, and of Mr. Skeete against Mrs. Barbara Batherson, comptroller of Jolyn Jewellery Limited, alleging that the company discriminated against them, and Mrs. Batherson discriminated against Mr. Skeete in violation of section 4, subsection 1(b) and (g) of the Ontario Human Rights Code, R.S.O. 1970, c. 318 as amended, by mistreating and eventually dismissing them from employment because of their race, colour or place of origin.

The facts concerning the two complaints are closely related, but Mrs. Samuel's employment ended ten days after Mr. Skeete's. I shall set out the facts in Mr. Skeete's complaint first, and refer to them while adding the extra facts relating solely to the complaint of Mrs. Samuel afterwards.

At the outset, it should be noted that the facts in question took place over a period from February 1976 to May 1978, some 28 months, ending about 17 months before the hearing was held. As a result many witnesses had to rely on their recollection of distant events, with little or no written evidence to refresh their memories. I found the witnesses co-operative and sincere, doing their best to recall exactly what had occurred. Nevertheless, there were wide divergences among them in their recollection of certain important events, requiring me to make findings of fact that necessarily contradict the testimony of certain persons while agreeing substantially with others. These findings should not be



construed as in any way questioning the integrity of those witnesses whose version of events has been rejected. Rather it demonstrates, if further demonstration be needed, the fallibility of human memory after such a lengthy passage of time.

#### THE FACTS IN MR. SKEETE'S COMPLAINT

Mr. Skeete is a Canadian citizen, aged 35, married with three children. He was born and educated in Guyana where he received training in electrical and mechanical maintenance, and in telephone installation and repairs. After receiving a certificate and working for the Telephone Company of Guyana, he moved to the United States. He worked for two years in Hartford, Connecticut as a technician and undertook further studies there in air conditioning and refrigeration. He came to Canada in 1972 and received training in computer operations and programming at the Control Data Institute in Willowdale, Ontario. Subsequently, he worked for three years at the Canadian National Institute for the Blind in Toronto as a computer operator on a Honeywell 58, LOSS-2 computer, physically the same machine as that at Jolyn Jewellery. He then worked for about three months at the Canadian Imperial Bank of Commerce in Toronto.

Some time in February 1976, while working at the bank, Mr. Skeete answered a newspaper ad for an experienced Honeywell 58 Computer operator. The ad had been placed in the newspaper by Mr. Lawrie Reis, carrying on business as a computer consultant under the name of Systems Design Group.





At the time Mr. Reis was advising Jolyn Jewellery in its computer operations. Mr. Skeete was interviewed by Mr. Reis, who was sufficiently satisfied with his qualifications and knowledge of the computer to introduce him to Mr. Joe Eisen, President of Jolyn Jewellery.

At that time the manufacturing business of Jolyn was expanding rapidly. The company had outgrown its simpler system of accounting and inventory control, and on the advice of Mr. Reis had acquired a Honeywell 58 Computer. Apparently, the problems in adapting its former system to a new computerized system turned out to be much more severe than the company had anticipated. It desperately needed employees experienced in computing, and it was for this reason Mr. Reis had advertised.

Mr. Eisen persuaded Mr. Skeete to start work part-time on a temporary basis almost at once. After three weeks Mr. Skeete was invited by Mr. Eisen to join Jolyn as a regular full-time employee. At that time Mr. Eisen explained that Jolyn did not pay overtime to its office staff, although they were expected to work overtime on some occasions. Instead, Jolyn would pay an end-of-year bonus to employees, based on their extra efforts and performance during the year. Thus, in March 1976, Mr. Skeete joined Jolyn as supervisor of computer operations. Mr. Skeete was responsible directly to Mr. Eisen.

There seems to be general agreement in the testimony of all the witnesses that Jolyn's business continued to grow, that the business needed an efficient computer operation for its accounting, billing and inventory control and that the computing system continued to cause problems and stress in the

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office during the first year of Mr. Skeete's employment. However, there is no evidence that during the remainder of 1976 the company's officers complained about, or were dissatisfied with Mr. Skeete's performance. In fact, in early December Mr. Eisen provided Mr. Skeete with a very favourable letter of reference to enable Mr. Skeete to make a bank loan.

At the end of the year, Mr. Skeete received a bonus of \$1,000, a sum which he considered inadequate in view of the extra time and effort he believed he had put into his job. He told Mr. Eisen that he was dissatisfied, but was informed that the company was "going through a critical time" and that he would do better the following year. There is a substantial difference of opinion about the amount of overtime worked by Mr. Skeete, he claiming to have worked many extra hours including week-ends, and witnesses for Jolyn claiming that overtime work occurred only occasionally.

Mr. Skeete gave evidence about an incident that occurred either late in 1976 or early in 1977, and that seemed to create in Mr. Skeete's mind a belief that Mrs. Barbara Batherson, then working in the collection of accounts receivable department, had exhibited prejudice against black people. According to Mr. Skeete, a black employee, Glenda Lewis reported to him in the presence of Mrs. Samuel, the other complainant, that, "During the course of a conversation with Mrs. Batherson, Mrs. Batherson told her that when she gets into power she is going to get rid of all the blacks in the office".

Mrs. Samuel's version was somewhat different. She



stated, "[Glenda Lewis] ... said 'I don't think Barbara likes blacks', or something like that, because she is planning to get rid of all of us. Something like that. I cannot remember the exact words." Thus Mrs. Samuel did not allege, even indirectly through Miss Lewis, that Mrs. Batherson referred expressly to black people.

Mr. Skeete stated that he heard corroboration of Miss Lewis's allegation from Mrs. Sophie Konjevic, but he did not attempt to quote her words. However, Mrs. Samuel did comment on Mrs. Konjevic's statement. Mrs. Samuel stated, "I thought it was a joke because she [Mrs. Konjevic] is always joking. Sophie said that. 'My friend says when she gets in power, she's going to get rid of all of you', and 'all of you'. It was just Randy [Skeete] and myself in the room. She didn't say black or white or what, she said all of you, but she couldn't be speaking to the wall, because there were only two people there, which was Randy and myself." Mrs. Samuel repeated several times that she thought it was a joke, a big joke.

Miss Lewis did not appear as a witness but Mrs. Konjevic did give evidence. Although she appeared as a complainant's witness, counsel questioned her very closely as if he were cross-examining her. She denied ever hearing Mrs. Batherson making any statement similar to that reported by Mr. Skeete or Mrs. Samuel. She further denied making any comment jokingly or otherwise about the subject because she did not think it "funny in the least". Mrs. Batherson, in her own testimony, vigorously denied ever making the alleged



statement.

The incident occurred about three years before the hearing and there is a direct conflict of testimony. Miss Lewis, who is alleged to have made the most explicit statement was not before us. We are here dealing with hearsay through an intermediary who has not appeared before us. In these circumstances I do not give any credence to Mrs. Batherson's actually have made the alleged statement. However, it does seem that Mr. Skeete honestly believed that Mrs. Batherson made such a statement. Thus, Mr. Skeete at an early stage in his relations with Mrs. Batherson became suspicious, if not convinced, that Mrs. Batherson harboured a prejudice against black people.

Early in 1977, Mr. Skeete said he was very tired from working under heavy pressure and requested two weeks' vacation with pay. Ordinarily all employees received two weeks' vacation with pay only when the plant closed in June for a two-week period. Therefore, Mr. Skeete's special request was for an additional two weeks. Mr. Eisen agreed to the request, but a few days before Mr. Skeete was to leave, Mr. Eisen appears to have changed his mind and informed Mr. Skeete that he would not be paid during the time off, because of a report received from Mrs. Batherson. Mr. Skeete was not told what the report said.

According to Mr. Skeete, computer operations were improving and were going quite well in the spring of 1977, but there were still serious problems in developing programming for the system, and in generating certain statements and reports

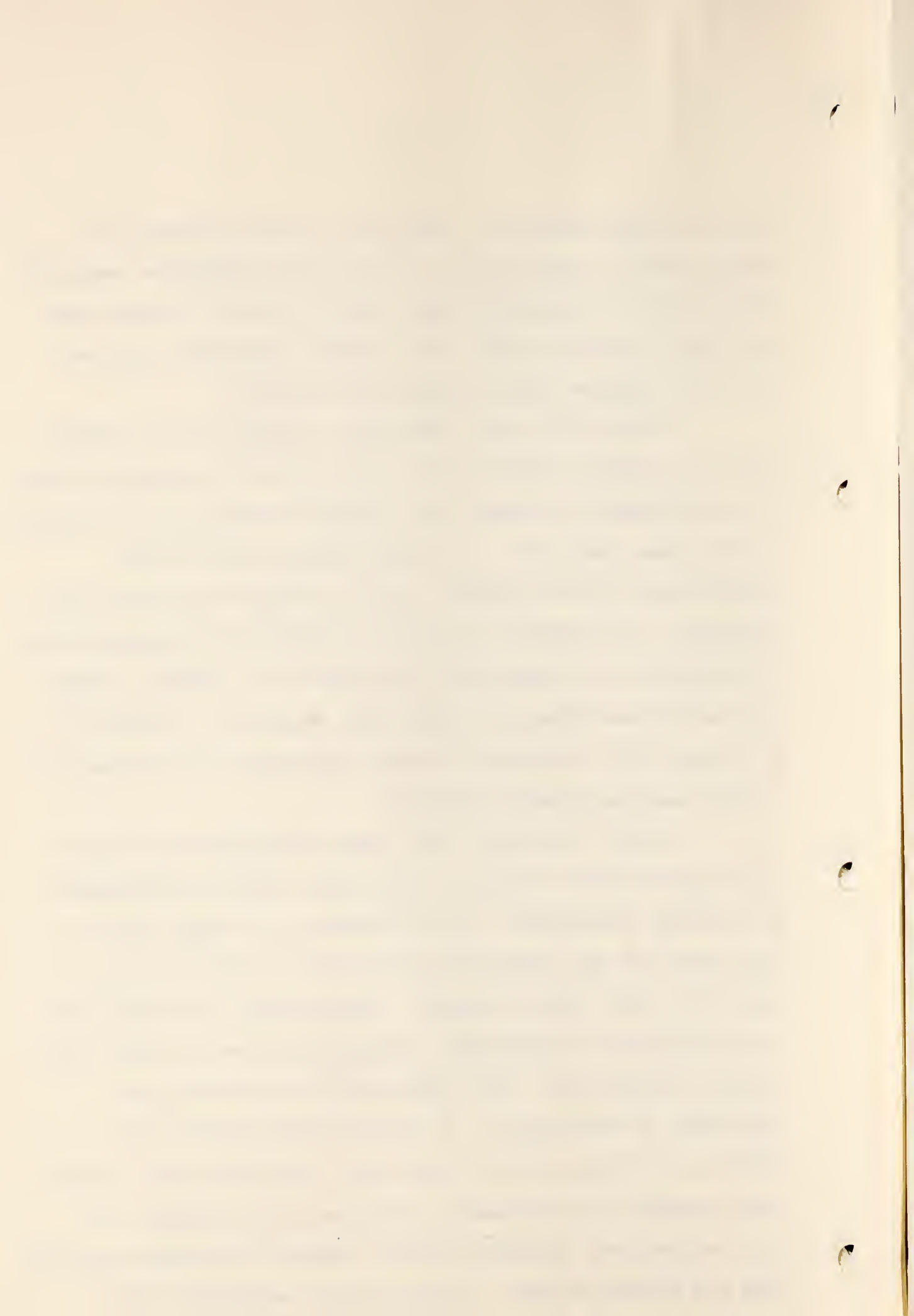




which the firm required. There was friction between Mr. Skeete and Mr. Reis because Mr. Reis kept demanding computer time to work on programs during the day when Mr. Skeete was busy with his day's tasks. Mr. Eisen's testimony confirms that this problem caused continuing friction.

In May 1977, Mrs. Batherson claimed that Mr. Skeete had made a fairly serious error with respect to charging taxes on an assortment of goods. As a result the government appeared to have been overpaid. Mr. Skeete denied that he was responsible for the mistake, and in a meeting with the vice-president, Mr. Goldfarb, and Mrs. Batherson the following day, it seems that Mr. Skeete was vindicated; Mr. Goldfarb stated that he did not think Mr. Skeete was to blame. According to Mr. Skeete, Mrs. Batherson became very angry and "stormed out of the room and slammed the door".

Within a few days, Mr. Eisen telephoned Mr. Skeete and requested that the two of them meet with Mrs. Batherson at a nearby restaurant. At the meeting, Mr. Eisen said he had heard that Mr. Skeete had upset Mrs. Batherson and he would not allow that to happen. Accordingly, Mr. Skeete was to be relieved of supervisory responsibilities and would just operate the machine. Mrs. Batherson was to be the new supervisor of the office. Mr. Eisen would not allow Mr. Skeete to tell his side of the story. From that time onward, there seemed to be increasing friction in the office, not only between Mrs. Batherson and Mr. Skeete but between each of them and others as well. In particular, according to Mr. Skeete, Mrs. Batherson would demand reports that Mr. Skeete



could not possibly produce with the then state of the programs.

According to Mr. Skeete, his relations with Mr. Eisen had always been good. After the meeting of May 25, when Mr. Eisen had removed Mr. Skeete from his supervisory responsibilities, Mr. Eisen remained friendly except when Mrs. Batherson was around. At those times he would refrain from speaking to Mr. Skeete at all. Despite these problems, Mr. Skeete continued in his job under the supervision of Mrs. Batherson.

In November 1977, Mr. Skeete reported to Mrs. Batherson, who by then had the title of comptroller, that he had received a better job offer and was going to resign. She was surprised and offered to try to persuade Mr. Eisen to raise his salary to keep him. His prospective new job was to have paid about \$20 per week more. Mrs. Batherson said she would try to get him \$40 more from Jolyn. It should be noted that Mrs. Batherson, despite her poor relations with Mr. Skeete, did not use the opportunity to get rid of him, but for the good of the company tried to persuade him to stay. Mr. Eisen himself, then offered an extra \$20 per week and said he would try to make up a greater sum in the bonus at the end of the year. Mr. Skeete accepted the offer and stayed on. However, he again received a \$1,000 bonus.

Mr. Eisen was away at the time the bonus was received and apparently he was very busy over the following few months. Mr. Skeete did not discuss his 1977 bonus until the subject was brought up by Mrs. Batherson in April 1978, when she asked him about it; she seemed to suggest that he deserved more.



Mr. Skeete asked if she would broach the matter with Mr. Eisen and Mr. Goldfarb, and she agreed to do so. Some time later she reported that the two senior officers refused to change the amount of Mr. Skeete's bonus and that he would have to wait until the end of the year again.

During the winter and early spring of 1978, according to Mr. Skeete, his relations with the senior officers of the firm remained good. However, there was one serious incident between himself and Mrs. May Samuel on the one side and Mrs. Batherson on the other. The exact time of the incident was not clearly established but it appears to have been some time in the early spring. Mrs. Batherson came into the computing room and asked the two to work overtime in an ill-tempered manner. When Mrs. Samuel refused, Mrs. Batherson became impatient, and according to Mr. Skeete she said: "When you black people achieve things you don't want to do any extra work...You and you will have to work overtime or else." Mr. Skeete was sufficiently upset that he went directly to Mr. Eisen to complain, Mr. Eisen tried to make little of the incident, and in his own testimony had no recollection of it.

In her testimony Mrs. Samuel, who was present when Mr. Skeete reported his version of the incident, gave a slightly different account. She stated, "[Mrs. Batherson]... came in the room and said, 'You and you have to work overtime this afternoon.' And I stood there. I was astonished, you know. I didn't know what to say and then, you know, she stood there and after she said something about colour and I can't recall the exact words because she murmured. She didn't say it





aloud, she murmured that part."

Mrs. Samuel also stated she believed the incident actually occurred a year earlier. This seems highly unlikely since at that time Mrs. Batherson was not yet supervisor over Mr. Skeete. In cross-examination, Mrs. Samuel admitted she was very angry over the incident at the time and could not remember exactly what was said but repeated that Mrs. Batherson, "Said 'coloured' something, but I really didn't pay too much attention. I was really angry...I can't remember her exact words...She murmured, I don't want to lie." In her testimony, Mrs. Batherson emphatically denied making any such statement using the word black or coloured.

The testimony of Mr. Skeete and Mrs. Samuel is consistent in suggesting that Mrs. Batherson was in an irritable mood and seemed rather overbearing. All three parties recall that Mrs. Samuel refused to work overtime and the two women agree that in a later interview between them Mrs. Batherson said that Mrs. Samuel need not work overtime if she did not want to do so. I think all three witnesses gave their honest recollections of the incident which occurred almost two years before the hearing. On balance, I am inclined to believe the complainants, that Mrs. Batherson probably did mutter some reference to 'coloured people' after the refusal of her demand. It remains a serious incident but it happened some months before the crucial events leading to the firing of the complainants in separate incidents.

Finally, on the morning of May 15, 1978, Mr. Skeete was called into Mrs. Batherson's office and informed that his



hours would be cut back because of lack of work. Mr. Skeete objected, saying that he could not see how operations could continue at all without an operator. He then went to see Mr. Goldfarb who claimed to know nothing of the decision and said he would look into it. At 5 p.m. Mr. Skeete was called back into Mrs. Batherson's office and was told he had been dismissed with two weeks' pay in lieu of notice. When he asked why, he claims she replied he had said "something bad" about her, but would not disclose anything else. Mr. Skeete collected his belongings and left.

With the exception of the two incidents of alleged racial comments by Mrs. Batherson, the parties are in general agreement about the facts as related above. However, in the view of the respondent there are additional facts that place the events in a different light. First, the respondent acknowledges that Mr. Skeete is a competent and generally reliable computer operator, but claims that he frequently has problems in personal relations with fellow employees. Before coming to Jolyn he was fired by the Canadian Institute for the Blind after working for that organization for three years, because of personality clashes with both his superior and a junior programmer working under him. He sued in County Court for wrongful dismissal and his action was dismissed. In any event, there is no doubt that from a very early date he complained about Mrs. Batherson to Mr. Eisen.

When in May 1977, Mrs. Batherson was effectively made his superior, both his evidence and that of Mrs. Batherson suggest they had disagreements on numerous occasions, that

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It includes a detailed description of the experimental procedures and the statistical analysis performed.

3. The third part of the document presents the results of the study. It includes a series of tables and graphs that illustrate the findings of the research. The data shows a clear trend of increasing activity over time.

4. The fourth part of the document discusses the implications of the findings. It suggests that the results of the study have significant implications for the field of research and may lead to further developments in the future.

5. The fifth part of the document concludes the study. It summarizes the main findings and provides a final statement on the importance of the research.

they got along very poorly and that Mr. Skeete resented her. In addition, he has stated that he believed she was prejudiced against blacks. Mr. Skeete gave evidence of a number of incidents of friction. However, with the exception of the incidents already described, they relate to administrative error and misunderstanding that disclose no evidence of racial prejudice. For instance, Mr. Skeete dwelled upon a break-down of the air conditioning system for a period of several days, a rather serious problem for computing equipment. Mr. Skeete interpreted the delays in repair to be a means of making him uncomfortable, at the risk of the computing equipment breaking down as well. In my opinion, there was no basis for Mr. Skeete's view.

In addition, some testimony was given, not directly involving the complaints, suggesting that black employees were treated less well than white employees with regard to sick leave and maternity leave. However, none of these incidents were more than vague hearsay, unsubstantiated either by the parties directly affected or by documentary evidence of the leave arrangements themselves. In my opinion, these incidents are more easily explained by the generally strained personal relations which seemed to persist in the Jolyn offices and do not demonstrate discriminatory practices.

From the evidence of Mr. Lawrie Reis, who continued as a computer consultant to Jolyn, from the evidence of Mrs. Batherson and several other employees, it appears that the Jolyn management perceived Mr. Skeete as an increasingly restive and unhappy employee, who might well leave at the





first good job opportunity. But he was very important to Jolyn, because he was the only trained computer operator on staff. In addition, he seemed to keep a great deal of essential information in his head instead of keeping detailed written records. He had changed a number of operating procedures from what they had been when he first joined Jolyn (according to Mr. Skeete, to improve operations), and Mr. Reis did not understand them fully. The company feared that if Mr. Skeete left without warning, their computer operation would come to a halt and it would be both costly and time-consuming to unravel the puzzle and to get back to full operations. Mr. Skeete had already stated he intended to leave on at least one occasion, (in November 1977, some six months earlier) and in the view of management they felt justified in their concern.

Accordingly, in the first week in May 1978 they hired Mrs. Evanne Hock, a computer operator with over six years' experience on a Honeywell 58 computer. They had two purposes in mind: Jolyn needed to start planning for upgrading its computer facilities still further and would need additional staff; at the same time they hoped to train a "back-up" for Mr. Skeete, some one who could keep the system running in the event that he should be ill or leave the firm.

In the weeks before May 15, 1978, the officers of the firm, encouraged by Mr. Reis, whose relations with Mr. Skeete had continued to deteriorate, became increasingly worried about their dependence on Mr. Skeete. Mr. Reis was sufficiently worried about a sudden departure by him that several



weeks before May 15, he copied many of the files stored on the Jolyn computer and removed them from the office as a precaution.

By May 15, work had dropped off significantly at Jolyn and a decision was made to lay off 40 to 45 employees for an undetermined period. Mrs. Batherson informed Mr. Skeete that he might be put on short time while sufficient work accumulated to operate the computer. Mr. Skeete objected to this procedure at the time and according to his own evidence as confirmed by Mrs. Batherson said "he could not understand how they could do without him during normal business hours." However, the complainants introduced no evidence to show that it was impractical to put computer operations on reduced time along with the rest of the office staff.

There is no reason not to accept the evidence that the planned lay-offs and short-time arrangements were intended to be implemented by Jolyn, that Mr. Skeete objected strongly and complained subsequently to Mr. Goldfarb, and at that point Mrs. Batherson made the decision to recommend firing Mr. Skeete. She consulted with Mr. Goldfarb in person and with Mr. Eisen by telephone. In view of Mr. Reis's fears about the computer programs it was decided to give him two weeks' pay in lieu of notice and have him leave at once. Since, as we shall see, Mrs. Hock was not yet sufficiently familiar with Jolyn's operations to run the computer, the dismissal of Mr. Skeete was ill-timed.



SUMMARY OF THE FACTS AND CONCLUSION

It may be that much of the conflict between Mr. Skeete and Mrs. Batherson was her fault because she was a difficult person to get along with. It may be that the Jolyn office was not well run, that there was much tension and conflict in which Mr. Skeete became enmeshed, and that Jolyn was itself responsible for generating the resentment and lack of cooperation it found in him. All these things might be relevant, if we were here concerned with a civil action for wrongful dismissal. But in these proceedings we are concerned only with the question of conduct contrary to the Human Rights Code. For the purposes of allegation under the code there seem to be three relevant incidents, all against a background of strained relations not shown to be related in any way to racial discrimination.

First, there is the alleged comment reported by Miss Glenda Jackson, of Mrs. Batherson saying she would get rid of all blacks in the office. Mrs. Samuel did not recall the use of the word blacks. The other two witnesses, including the witness called by counsel for the complainants, denied that the incident had taken place. The central evidence was hearsay, from a witness who did not appear before the proceeding. (It seems she is no longer in Canada but there was no certainty about her whereabouts). Thus, while Mr. Skeete believed Mrs. Batherson had made a prejudiced statement, neither Jolyn Jewellers nor Mrs. Batherson can be found responsible for that belief.





Second, there is the overtime incident early in 1978. Mrs. Batherson appears to have been in an irritable mood, and there was tension in the computer room. After Mrs. Samuel's refusal to work overtime, Mrs. Batherson did mutter something about black or coloured people not wanting to achieve. This remark must be regarded as a racial slur and a serious incident. The question remains whether it is sufficient evidence of prejudice in the mind of Mrs. Batherson to play a material role in the third incident, the firing of Mr. Skeete on May 15, 1978.

I have reviewed the evidence of all witnesses with respect to the working environment in the Jolyn office generally and especially from May 1977, when Mr. Skeete was relieved of his supervisory responsibility, until May 15, 1978. I am satisfied that there was a steady increase in tension and deterioration in relations between Mr. Skeete on the one hand and Mrs. Batherson and Mr. Reis on the other. I am also satisfied that Mr. Skeete contributed to that tension himself in that he was not a relaxed and easy-going person and has some history of conflict with fellow workers. Whether the fears and suspicions of the officers of Jolyn were completely justified in relation to a claim for wrongful dismissal, I am satisfied that they honestly believe that Mr. Skeete might well leave them without warning. He had talked about leaving on more than one occasion, and on his own testimony actually needed to be persuaded to remain at Jolyn in November 1977. He had changed operating procedures and did not keep detailed written records of the changes. Without in any way imputing



his motives in this conduct, in the atmosphere of conflict, especially with Mr. Reis, it was not unreasonable to have the concerns and to take the precautions that were taken. The copying of computing information by Mr. Reis is consistent with these fears. I believe these fears were dominant in the minds of the officers of Jolyn and decisive on May 15, 1978, when they fired Mr. Skeete. I do not believe that the one incident of racial prejudice with respect to overtime, serious though any such incident must be, played a material role in the decision to fire Mr. Skeete.

If there were any evidence that Jolyn had a history of employing very few people from racial minorities - if there were any previous incidents of discrimination at Jolyn - it might be necessary to take a more serious view of the one incident. But the evidence shows that Jolyn has employed a very high percentage of immigrant workers from many parts of the world of various colour and racial origin. Even discounting evidence of present employees because of loyalty to the firm or fear of reprisal, a number of employees expressed in very positive terms their conviction that the firm did not practise any form of discrimination and indeed condemned it. In these circumstances, one racial remark in much broader and more pervasive context of stressful relations confirmed by both parties, does not appear material. Of course, it is impossible to peer into the subconscious of a person's mind, but when all the external indicia of the evidence before the hearing are weighed, I do not find it possible to conclude that one incident can condemn Mrs.



Batherson. Indeed, if the effect of one such incident were to taint the firing with racial discrimination in this case, it would seem virtually impossible ever to let Mr. Skeete go without such condemnation following almost inevitably. It does not seem to me that our Human Rights Code, either in letter or spirit exacts such a high standard from one fault.

The leading case on this subject appears to be Regina v. Bushnell Communications Ltd., et al. (1974) 4 O.R. (2d) 288. In that case the accused corporation was charged under s. 110(3) of the Canada Labour Code, R.S.C. 1970, c. L-1, making it an offence to "refuse...to continue to employ any person...because the person is a member of a trade union". There was evidence of acrimony and disagreement among a number of employees and especially with the subsequently dismissed employee, whose dismissal led to the charge being laid. Indeed it would not have been surprising had the company decided to dismiss him at some point. However, the day before the dismissal, a letter was delivered by a union representative to the executive vice-president of the company, advising him that the employee was a member of the union. In other words, the notification of union membership was followed the next day by dismissal. The court of appeal, in upholding the conviction of the employer stated (at p. 290), "...union membership must be a proximate cause for dismissal, but it may be present with other proximate causes." [Underlining, mine.] I construe these words to mean that union membership must have played a material role, though not the sole or even dominant role in the decision to





dismiss. Given the sequence of events in the Bushnell case it is not all surprising that union membership was so viewed by the court.

Another way of stating the test might be to ask, "Would the employee have been dismissed at that time, had the impugned proximate cause not been present?" In the Bushnell case, it is hard to imagine the dismissal occurring just by coincidence the day after notice was received of the employee's membership in the union.

The same questions asked in the present case would be, "Was Mr. Skeete's race or colour a proximate cause in his dismissal?" and, "Would Mr. Skeete have been dismissed at that time, had he been a white employee?" In my view, the answer to the first question is "no", that Mr. Skeete's colour was not a proximate cause. Rather, it was strained personal relations unrelated to race and to which both employee and employer had contributed, expressed resentment and puzzling conduct in the operating procedures of the computer by Mr. Skeete and genuine fear, whether justified or not, on the part of the employer that he might leave the company "in the lurch", brought to a head by the confrontation of May 15, that led to the dismissal. It follows that Mr. Skeete, would very likely have been dismissed if he had been a white person in the same circumstances and on the same occasion. I do not believe that Mr. Skeete being a black man played any role in the decision to dismiss.

Accordingly, I do not find that Jolyn Jewellery Limited, or Mrs. Barbara Batherson violated section 4,



subsection 1(b) and (g) of the Ontario Human Rights Code in dismissing Mr. Randolph Skeete.

THE FACTS IN MRS. SAMUEL'S COMPLAINT

Mrs. Samuel is 35 years old, born in Jamaica where she received her training as a key punch operator and came to Canada in 1968. She is married and has two children. Before coming to Jolyn she worked as an operator at the Ontario Ministry of Health and for a firm known as Staff Builders Employment Agency. In August 1976, she was hired by Mr. Skeete while he was supervisor of computer operations. Mrs. Samuel was considered a reliable, experienced key punch operator by Mr. Skeete as well as by his superiors. She seems to have got along well with everyone including Mr. Skeete. Before her last few days at Jolyn, there was only one reported incident involving Mrs. Samuel in which there was any friction - the incident in which Mrs. Batherson requested that Mr. Skeete and Mrs. Samuel work overtime, as described in detail in the facts of Mr. Skeete's complaint. The crucial part of the events concerning Mrs. Samuel occurred just after Mr. Skeete's dismissal.

After Mr. Skeete was dismissed, May 15, 1978, Mrs. Samuel found that her workload became very heavy. According to Mrs. Samuel, Mrs. Hock, who had been hired as a "back-up" operator for Mr. Skeete, was unable to run the computer. Mrs. Hock had been with Jolyn less than two weeks. Although she was an experienced operator on a Honeywell 58, Mrs. Hock stated that it would take some time to become familiar with the

CHAPTER IV

THEORY OF THE

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programs and procedures. She said that she first needed to become familiar both with Jolyn's business and with how the computer is used to assist the business. In particular, Mrs. Hock - whose evidence was supported by that of Mr. Reis, the computer consultant who had originally recommended hiring Mr. Skeete - claimed that there was very little documentation about Jolyn computer operations available to her. Mr. Skeete seems to have kept much of the day-to-day information in his head. Mrs. Hock stated it was essential to have the documentation and to have a deck of key-punched cards called "execute cards", to run the computer successfully. I shall return to the question of the cards, but for the moment, it is important to note that in Mrs. Samuel's view, Mrs. Hock seemed not to know how to operate the computer. Mrs. Samuel, being a competent key punch operator who had helped Mr. Skeete with computer operations from time to time, had also learned a good deal about operating the computer itself during her more than two years at Jolyn. She knew how to start up the computer and did so the morning of May 16, after Mr. Skeete had been dismissed. To her it seemed that Mrs. Hock was rather helpless and ill-prepared. For the next few days she performed a number of computer operations and did her key punching as well. She was aware that Mr. Skeete had been dismissed because he had told her about it by telephone the evening he had lost his job. According to both Mrs. Hock and Mrs. Batherson, Mrs. Samuel worked very hard and was particularly helpful in the days following Mr. Skeete's dismissal.





Mrs. Hock stated that she had great difficulty getting the computer to operate because on the morning after Mr. Skeete was dismissed, although she found a fairly large number of cards, they were in disarray - all out of order - in a tray by the computer. She could not make any sense of them. At that point, Mrs. Samuel volunteered the information that she had a set of execute cards at home and would bring them to work the next day.

There is substantial disagreement among the witnesses about the number and significance of this set of execute cards that were in Mrs. Samuel's possession at her home when Mr. Skeete was dismissed. At a date that was not established by either side, Mrs. Samuel had keypunched a set of cards related to computer operations. Mrs. Samuel said she produced these cards on Mr. Skeete's instructions, about thirty or so of them, that could be used if the computer "goes down in the middle of an invoice run". She took these cards home with her, for reasons that were never explained and there is no doubt that taking them home was a very unusual thing to do. These cards were the property of Jolyn and related to the computer operations of Jolyn. They were not the personal property of Mrs. Samuel although it seems that she believed them to be of value only to herself.

According to Mrs. Hock, Mrs. Samuel brought in a carton of 300 or so cards, not thirty. Largely through the efforts of Mrs. Samuel who was familiar with the cards, the computer was started up and operated over the next few days. Mrs. Hock, with the assistance of Mr. Reis, sorted the cards



which were already in reasonably good order, and placed them in appropriate plastic pouches in a large binder specially designed for key punch cards. From there they could be removed in appropriate groups and used in the computer operations. Mrs. Hock stated that these cards were used in most of the regular day-to-day operations of the computer. Mr. Reis's testimony is in general agreement on this point, although he did not say, nor was he asked by counsel, how many cards there were.

We therefore have Mrs. Samuel's evidence asserting that there were very few execute cards for the limited purpose of restarting the computer when it "goes down". Mrs. Hock, on the other hand claims that Mrs. Samuel brought some 300 cards to the office, cards which could be used for many or most of the daily procedures. Mrs. Samuel must be mistaken to some extent, because it does not seem consistent that the cards would have been the subject of discussion and a substantial benefit in the computer operations if there were only thirty of them for the limited purposes described by her. We are also left with the unanswered question of why she took the cards home (where they could serve no useful purpose) rather than leave them in the office near her desk or key-punch machine. The only reasonable explanation seems to be for safekeeping because of some concern for their disappearance if they were left at work. Even if Mrs. Samuel's perception of the cards was that they were of little value, she nevertheless volunteered the information that she had them at home and did bring them into the office the following day, surely in the



belief that they would be of some assistance. It also seems clear that Mrs. Hock and Mr. Reis believed that the cards were important in keeping the computer running. The approximate number of cards is of less consequence than the clear evidence that they were a significant help in running the computer.

The events appear to have occurred as follows: Mr. Skeete was dismissed Monday afternoon, May 15, 1978. Tuesday morning, Mrs. Hock was asked to operate the computer and found the execute cards in disarray and was unable to work with them. Mrs. Samuel then stated she had some cards at home and brought them to the office Wednesday morning, May 17. She did much of the work needed to keep the computer operating, as well as any needed key punching that day and on Thursday, May 18.

Sometime Friday morning, May 19, Mrs. Samuel received a telephone call from an anonymous person, a woman who, according to Mrs. Samuel, said, "You are so stupid there. They are using you. Imagine, they are paying Evanna [Hock] \$250 and you have to show her everything and you are doing all the work." Mrs. Samuel asked who the caller was, but the caller refused to identify herself. The telephone call greatly upset Mrs. Samuel who earned \$210 per week. A little later she confronted Mrs. Hock and asked her whether it was true that Mrs. Hock was earning \$250. Mrs. Hock denies disclosing what amount she earned while Mrs. Samuel claims that Mrs. Hock confirmed the figure. However, Mrs. Hock's reaction must have confirmed to Mrs. Samuel's that her belief was correct. A striking example of conflicting evidence on this matter





occurred in the earlier testimony of Mr. Skeete. When asked by his counsel whether he had any knowledge of Mrs. Hock's salary, he replied, "I overheard her telling Mrs. May Samuel she was making \$250 a week." Yet it is clear that Mrs. Samuel did not know Mrs. Hock's salary until the anonymous telephone call received after Mr. Skeete was dismissed. Both Mrs. Hock and Mrs. Batherson confirm Mrs. Samuel's reaction on Friday, May 19. Without in any way questioning the integrity of the witness, I think this contradiction between the evidence of Mr. Skeete and Mrs. Samuel, both complainant's in this hearing, emphasizes, despite the fallibility of memory after such a long time, how easy it is for parties to delude themselves that they have remembered events with apparent accuracy, later proved to be false.

Mrs. Samuel went to Mrs. Batherson's office about 3:00 p.m. to complain that she was training Mrs. Hock but earning less money. She thought it was unfair and she was very upset about it. Mrs. Batherson at first, refused to discuss Mrs. Hock's salary saying it was a matter between Mrs. Hock and the company, but eventually she tried to re-assure Mrs. Samuel, saying that she herself could not grant a \$40 increase in salary but that she would speak to Mr. Eisen about getting an increase of perhaps \$25. She suggested that Mrs. Samuel talk the matter over with her husband on the long week-end and would feel better on the following Tuesday. Both parties are in general agreement about this conversation. However, at that point it appears that Mrs. Samuel made up her mind that regardless of the pay issue the task of helping



run the computer and acting as key-punch operator was too demanding and stressful. She decided in her own mind that she would be content to remain as just a key-punch operator and would refuse to help with the computer operation. Before leaving work at the end of the day she went to the binder containing the execute cards, removed the ones she had brought from home and threw them into a garbage bin. No one else in the office was aware that Mrs. Samuel had done this.

On the following Tuesday morning when Mrs. Hock went to the binder she saw at once that a number of the cards were missing. According to Mrs. Hock, about half the cards were missing, while Mrs. Samuel claims that only the thirty cards she had brought back to Jolyn were missing. At that point, Mrs. Samuel spoke up and said there was no point in looking for the cards because she had taken them and was not going to return them. Mrs. Samuel's evidence does not contradict Mrs. Hock on this point, and it is a very important point. For if the cards taken by Mrs. Samuel the preceding Friday had only been a small group of back-up cards in case the computer should go down - a group of cards in the back of the binder as Mrs. Samuel had described them - then Mrs. Hock would not have noticed immediately that they were missing and there would have been no reason for Mrs. Samuel to volunteer the information that she had taken the missing cards. In my opinion, the missing cards must have been of greater importance not only in Mrs. Hock's mind but also in Mrs. Samuel's mind at the time, or Mrs. Samuel would not have volunteered the information. While I have no doubt that Mrs. Samuel is an



honest witness, on balance it seems much more likely that Mrs. Hock's version of what happened - that a number of important execute cards (whether more or less than half is not significant), were missing - is more accurate than Mrs. Samuel's version.

Mrs. Samuel did not disclose that she had thrown the cards away. Mrs. Hock then went to Mrs. Batherson's office to tell her what had happened. According to both Mrs. Hock and Mrs. Batherson, the latter then approached Mrs. Samuel to try to persuade her to return the cards, but Mrs. Samuel refused. Mrs. Samuel does not believe that she spoke to Mrs. Batherson on the Tuesday, but it is probable that some such conversation took place. In any event, without the cards, and with Mrs. Samuel refusing to do any work other than key-punching, computer operations were severely curtailed for the day. Mr. Goldfarb, the vice-president of the company at the time, was out of town, and Mrs. Batherson delayed taking any action before his return the following day, Wednesday, May 24.

Wednesday morning, when Mr. Goldfarb had returned to the office, Mrs. Samuel was called to a meeting with him and Mrs. Batherson. This meeting was reviewed extensively in examination-in-chief and cross-examination of both Mrs. Samuel and Mrs. Batherson, and there is general agreement about what occurred until the last few moments of the meeting. Mrs. Samuel was asked why she had taken the cards and she stated she believed they were her own property, and of no value to the company. When Mr. Goldfarb insisted that they were





company property, she then disclosed that she no longer had the cards but had thrown them away. It appears that Mr. Goldfarb, Mrs. Batherson and Mrs. Samuel became increasingly angry and hostile from that point onward. Whether Mr. Goldfarb or Mrs. Batherson first suggested calling the police is not certain, but at the end of the conversation it was made clear to Mrs. Samuel that the police were going to be called to report that she had either stolen or destroyed company property.

Mr. Goldfarb did not appear as a witness, but Mrs. Batherson stated that when he said he would call the police, "[Mrs. Samuel]...got upset and she stormed out of his office." In cross-examination, Mrs. Batherson added, "She left his office shouting all the way, and I heard a commotion in the office..." However, Mrs. Samuel's version of the end of the meeting is quite different. She stated that when Mr. Goldfarb indicated that the police would be called, she said, "Very well, I am going to call the Department of Labour." At that point she left the office. When asked by her counsel, "Were you swearing or raising your voice or making any noise at this time?" she responded, "I was just murmuring to myself..." To the question, "Were you raising your voice?" she replied, "Not to the extreme." And to, "Were you speaking softly?" she said, "Not very softly, no, you could have heard...Some of them [the people in the office] could have heard. Like for instance the receptionist...but not everybody." Mrs. Samuel rather reluctantly recalled that she was not entirely calm and composed on leaving Mr. Goldfarb's office.



Mrs. Hock gave evidence similar to that of Mrs. Batherson, to the effect that Mrs. Samuel on coming out, or shortly after coming out, of Mr. Goldfarb's office, was shouting abuse and calling Mrs. Batherson names as she approached the computer room. Mrs. Betty Reid, who was cross-examined extensively by counsel for the Commission, also heard Mrs. Samuel come from Mr. Goldfarb's office shouting abuse at Mrs. Batherson. Mrs. Joan Wiederhold, whose desk was next, to that of Mrs. Reid (both of whom could see Mrs. Samuel within a few feet of her leaving Mr. Goldfarb's office) testified to the same effect.

There is no doubt that Mrs. Samuel and Mrs. Batherson were both very upset at the time, and either could have got the sequence of events confused. However, three witnesses corroborate Mrs. Batherson's statement that Mrs. Samuel "stormed out of the office", and I find that this version is on balance the more likely one.

At that point, Mrs. Samuel fetched her purse from the computer room and went to Mrs. Wiederhold's desk to telephone the Human Rights Commission. There was some uncertainty about the order of events, but the above sequence seems probable. After making her telephone call Mrs. Samuel left her Jolyn "I.D." card with Mrs. Wiederhold. It is also agreed that right after the telephone call, whether before or after depositing the "I.D." card is not established, Mrs. Samuel began to shout again and left the building. Mrs. Samuel states that the reason she started to shout was that Mrs. Batherson passed by closely and made a remark about coloured people. In



Mrs. Samuel's words, "When she passed and she passed very close to me and she said, 'You coloured people', something as she was walking, so I didn't catch the second part of it and I said 'You stupid bitch, what did you say?', because I was really angry and I shouted it. Everybody in the office could hear. I was really angry."

Mrs. Batherson denied coming out of Mr. Goldfarb's office until Mrs. Samuel had left the building, and stated that she had no further contact with Mrs. Samuel until the latter telephoned some time later from the offices of the Human Rights Commission. Mrs. Hock stated that Mrs. Batherson was not in the office when Mrs. Samuel was shouting either before or after the telephone call. Under intensive cross-examination, both Mrs. Reid and Mrs. Wiederhold stated that Mrs. Batherson did not pass by Mrs. Samuel immediately after she made her telephone call to the Human Rights Commission. There was some uncertainty in both witnesses about the details, because they both said they were very embarrassed by the shouting and profanity and tried to avert their eyes. They acknowledged that details of these events were distant and they did not recollect them exactly. Nevertheless, so soon after Mrs. Samuel had shouted abuse at Mrs. Batherson, it would be remarkable that her personal appearance in the office, close to Mrs. Samuel, would go entirely unnoticed by all three of these witnesses. Mrs. Samuel herself only recollects the words "you coloured people" and stated that she did not hear the context in which the words may have been used - if indeed they were used at all.





She readily admitted she was very angry and upset at the time. In my opinion, the weight of evidence does not establish that Mrs. Batherson did pass by Mrs. Samuel immediately after the telephone call.

It should be noted that the words "you coloured people" are not in themselves perjorative but must take their meaning from the context. Thus, even if they were used it is possible that they were part of a defensive or worried statement, after the telephone call made to the Human Rights Commission, such as "We treat you coloured people the same as everyone else," or "I have nothing against you coloured people." There is no evidence by the complainant that puts these words in a perjorative or discriminatory context, and I believe it would be unwarranted to make such an inference in the circumstances. In any event, on this confused and rather slender evidence it does not appear justified to find that a racial slur against Mrs. Samuel was uttered by Mrs. Batherson, though no doubt Mrs. Samuel believes it was made. I find that Mrs. Batherson did not make such a remark.

Mrs. Samuel left Jolyn at 10:00 a.m. and went to the offices of the Human Rights Commission, where she found that she would have to wait for an interview. About noon, she telephoned Mrs. Batherson to say she would be late in returning, apparently believing she still had her job. Mrs. Batherson stated that Mrs. Samuel herself raised the question of whether she still had a job, suggesting there was doubt in Mrs. Samuel's own mind. Although little turns on which is the more accurate



recollection of the event, it does seem rather unrealistic for Mrs. Samuel, after the accusation of theft and order to call the police, the violent shouting in the office and leaving without consent of the employer, to assume that she still had a job awaiting her at Jolyn. Mrs. Batherson's version of the telephone call appears more accurate than that of Mrs. Samuel. It would seem reasonable, after all that occurred, to ask about one's status at work. Both agree that Mrs. Batherson then informed Mrs. Samuel that she was dismissed, and they discussed arrangements for her to pick up her cheque for any wages owing. The reason given for the dismissal was "mischief", that is, the destruction of company property in the form of the execute cards. Mrs. Samuel was subsequently charged with a criminal offence, but the charge was dismissed.

#### SUMMARY OF THE FACTS AND CONCLUSION

Mrs. Samuel is a competent and diligent key punch operator, highly regarded by the senior officers at Jolyn. She did have one serious disagreement with Mrs. Batherson at the time of the overtime incident involving as well Mr. Skeete. This incident took place two or three months before the events of late May 1978 and no doubt left some background of suspicion and hostility towards Mrs. Batherson because of her reference to coloured people and her perceived overbearing manner at that time. There was also a state of continuing stress and friction in the office between Mr. Skeete and Mrs. Batherson possibly involving others as well. Nevertheless,



Mrs. Samuel was very willing to be helpful when the company needed her services after Mr. Skeete was dismissed.

After Mr. Skeete's departure, Mrs. Samuel found herself under much increased pressure with Mrs. Hock's dependence upon her in running the computer. There is no doubt that the mysterious telephone call from an unknown person was the catalyst that precipitated the unfortunate events which followed. Whoever may have instigated the telephone call, there is not the slightest indication that any officer of Jolyn was implicated. Indeed, in the circumstances after Mr. Skeete leaving, Jolyn badly needed Mrs. Samuel's continued help and had no reason to precipitate a crisis. Although one may sympathize with Mrs. Samuel's viewpoint that Mrs. Hock could not handle the job and her bitterness at being paid less, Mrs. Samuel's perception did not justify her destroying company property. Even so, Mrs. Batherson hesitated to dismiss her after learning that Mrs. Samuel had taken the cards, perhaps in the hope of recovering the execute cards and in the hope of restoring relations with a needed employee. However, it is hardly surprising that the company after learning that the cards had been destroyed and after Mrs. Samuel's outburst of shouting and abuse, and finally leaving the premises to file a complaint against it, chose to dismiss her for cause. Whether the company was justified in dismissing for cause in law, is not the issue before us. The only issue is whether the company's officers thought they were dismissing Mrs. Samuel because of her conduct without regard to her race or colour.





I have found one piece of evidence, the overtime incident some months before, where a racial remark was very likely made by Mrs. Batherson. The only other allegation of a racial remark, was that made after the events had occurred which led to Mrs. Samuel's dismissal. Even if Mrs. Samuel's evidence of this second remark were accepted, substantial doubt would remain whether prejudicial views played any material role in the decision to dismiss. As it is, I have found on the evidence that Mrs. Batherson did not make a second remark about coloured people, and even on Mrs. Samuel's own testimony there is no evidence of the words used in a perjorative sense. Thus, while there is evidence of very strained personal relations there is no evidence to establish discriminatory conduct by Mrs. Batherson. On the other hand, there is strong evidence that Mrs. Samuel was the author of her own dismissal, albeit as the consequence of a nefarious and anonymous telephone call that occurred during particularly stressful working conditions.

Referring again to the Bushnell case, I do not find that Mrs. Samuel's colour was a proximate cause in her dismissal. There is no basis to doubt that a white employee who had thrown away a number of execute cards in similar circumstances, who shouted abuse of a member of management and left the premises of the employer to lay a complaint, would not also have been dismissed. Accordingly, I do not find that Jolyn Jewellery Limited violated section 4, subsection 1(b) and (g) of the Ontario Human Rights Code when it dismissed Mrs. Samuel.



In accordance with section 14c of the Ontario Human Rights Code I have decided that neither respondent has contravened the Code.

Dated at Kingston, Ontario, this 23rd day of June, 1980.

A handwritten signature in dark ink, appearing to read "D.A. Soberman", is written over a horizontal line.

D.A. Soberman  
Board of Inquiry

